

# Prime Minister Abe's Constitutional Campaign and the Assault on Individual Rights

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## Abstract

While calls for constitutional amendment have frequently recurred since the end of the Allied Occupation of Japan in 1952, the current Abe government's proposals for constitutional change involve something fundamentally new. Rather than calling for amendment of specific clauses, most notably Article 9, the Abe government's approach is an attack on the very core of constitutionalism. Central to this attack is a process of undermining of individualism in favour of efforts to enforce morality, tradition, culture and military expansion: a process which is deeply connected to Abe's historical revisionism. This article explores how Abe's approach undermines constitutionalism itself, and assesses the political and social implications of this assault on Japan's constitution.

## Keywords

Japan; constitution; Abe government; historical revisionism; individualism; civil society.

## Introduction

Abe Shinzō assumed the leadership of the Liberal Democratic Party (LDP) for the second time in September 2012, and became Prime Minister in December of the same year with the catastrophic defeat of the LDP's competitor, the Democratic Party of Japan (DPJ). Since then, Prime Minister Abe has persistently waged war on the Japanese constitution. While calls for constitutional amendment have

frequently recurred since the end of the Allied Occupation of Japan in 1952, the current war on the constitution involves a fundamental change: it shifts from the call for amendment of specific clauses, most notably Article 9, to an attack on the constitution itself. In other words, although we, as citizens of Japan, have faced numerous constitutional crises, we are now confronted with Abe's attack on the very core of *constitutionalism*: that is (as I shall explain) his attack on individualism through efforts to enforce morality, tradition, culture and military expansion. This article explores how Abe's approach undermines constitutionalism itself, and assesses the implications of this assault on Japan's constitution.

In order to clarify these implications, I first discuss Japanese scholars' protest against the current state of Japanese politics, focusing on their active participation in a widespread social movement protesting against Abe's anti-constitutionalism. Although Japanese scholars have long been engaged in debates about the constitution, they are now engaging in the issue in a new way, organizing their own associations, such as the "Association for Article 96" and its successor, the "Association of Scholars Opposed to Security-related Laws," which not only hold open lectures on the constitution but also denounce the government's approach in the streets, and create new linkages between academia and the public. What impels scholars to expand their opposition to Abe's anti-constitutionalist plans in this way?

Second I focus on the difference between earlier attempts at constitutional amendment

and Abe's current plans. By examining the arguments of Abe's sympathizers, especially their notion of the relationship between individuals and the state, I explore the underlying meaning of the current anti-constitutionalist approach, and consider why Japanese citizens should be seriously alarmed by it. Finally, I would like to consider whether these current moves imply a return to the pre-war period – that is, to the era of the Imperial Constitution – or whether they are a sign of an emerging new regime. With this in mind, I conclude that Abe's crucial target of attack is "individualism," which has been the core value of Japan's postwar constitutionalism as well as the premise on which it rests.

### *Why Scholars Raise their Voices against Abe's Constitutional Coup?*<sup>1</sup>

Currently, every weekend in Japan, scholars are holding protests or events such as lectures and symposia about the constitution. Until recently, students and citizen groups were the main participants in street protest and rallies against the government, as in the student protests against the US-Japan security treaty in the 60s-70s, and the more recent protests in the aftermath of the 3.11 Fukushima earthquake-tsunami-nuclear power plant meltdown triple disaster. Why have so many scholars become involved in protest against the Abe administration? What is the political background to their initiatives? In December 2012, when Abe (who had resigned in humiliation five years earlier) became Prime Minister for the second time, he started to emphasize revision of Article 96 of the constitution, because it was an obstacle to constitutional amendment. Article 96 reads: "amendments to this Constitution shall be initiated by the Diet, through a concurring vote of two-thirds or more of all the members of each House." Abe argued that it was unfair that constitutional amendment could be blocked by

a mere one-third of the members of the Diet, when opposition from a majority of Diet members is necessary to block other legislative proposals.

Many scholars, especially scholars of constitutional law and political science, came to realize that Abe was defying the history of constitutionalism, in the sense that he seemed unable to distinguish the constitution from other laws: for him, the constitution was simply a law like any other, rather than the foundation upon which lawmaking itself rests. Abe's distorted understanding of the constitution, as well as the political power which he enjoys as Prime Minister (given the size of his majority and the weakness of the opposition) made so great an impact that many scholars came out of the classroom to engage with citizens directly in public, in order to discuss the Japanese constitution and the core ideas of constitutionalism. Thanks to these scholars, a growing number of ordinary citizens gained greater knowledge of the concept of constitutionalism: that is, an understanding of the fact that the role of the constitution is to place limits on the exercise of political power within the framework of universal principles of respect for fundamental human rights.<sup>2</sup> The movements organized by scholars are a new type of movement in the sense that they use new techniques to break down the boundaries between academia and wider public debate and protest. As I will argue later, these endeavors to broaden discussion about the idea of constitutionalism are intended to resist the growing politicization and inculcation of nationalism by the Abe government through the education system.

Higuchi Yōichi, an expert on constitutional law has criticized Abe's approach to Article 96 as being like "backdoor admission" to college [*uraguchi nyūgaku*]: i.e., it bends the rules of the system in order to achieve a preconceived desired result. On May 23 2013 Higuchi and other scholars from various academic fields

formed the “Association for Article 96” with the following manifesto:

The amendment of Article 96, which specifies the procedure for amending the constitution, is going to be a point of dispute in the Upper House election in the upcoming summer [of 2013]. Those who have raised the issue are intent on amending the article so that constitutional amendments can be proposed with approval of a simple majority of Diet members, while in the current constitutional practice it requires support from more than two-thirds of the members of each House. Clearly, these moves initiated by the LDP are motivated by their intention to render it easy to change the fundamental principles of the constitution, including the preamble – which establishes government by “a sacred trust of the people” as “a universal principle of mankind” – Article 9 which defines pacifism, and Article 13, which provides a constitutional foundation for human rights, specifying the right of the individual to be respected.

Whether we can protect Article 96 is not simply a procedural issue but a substantive one, *because it is fundamental to constitutionalism, that is, the constitution’s role in constraining state power. [...] To aim to loosen restrictions on constitutional amendment by using Article 96, which indeed specifies these very restrictions, signals a threat to the raison d’être of the constitution.*<sup>3</sup>

The first symposium of the Association was held on June 14, 2013 at Sophia University in Tokyo.<sup>4</sup> More than one thousand people attended, and media including newspapers and TV covered the event. Soon information about the event spread across the country, and in Kyoto and other cities similar associations were formed by scholars and citizens seeking to

protect Article 96. Scholars and some universities also organized associations of faculty members. The inauguration of such associations aiming to protect the constitution attracted widespread attention,<sup>5</sup> and was among the factors which led Abe to give up the idea of revising Article 96 for the time being, even though he and his supporters had seen this revision as an important first step towards the amendment of Article 9, which is among the administration’s core targets.

Since Abe realized that amending the Constitution through legitimate constitutional processes was almost impossible in the short term, he turned to his long-held theory that the right of collective self-defense can be exercised under the current constitution, rejecting the interpretations of former administrations. As far back as 2004, when he was the Secretary General of the LDP, in a question he posed in the budget committee of the House of Representative, Abe had suggested that Japan could constitutionally exercise the right of collective self-defense even under the current “peace constitution”, on the grounds that collective self-defense is the inherent right of every state under international law.<sup>6</sup> Ever since then, it has been his cherished thesis that the restriction on collective self-defense is analogous to the old notion of the regulation of “incompetent persons”, who have a right to property but do not have freedom to exercise it.<sup>7</sup> In other words, he proposes that Japan is being treated like an incompetent ward of others, rather than as a competent autonomous subject which shares the rights of other autonomous subjects. According to Abe’s logic, since the current constitution was imposed by the US, it would be easy for his government to amend it if the US requested Japan to do so, for example, in order for Japan to participate in collective self-defense.

Abe’s proposal for collective self-defense not only contradicted earlier official interpretations<sup>8</sup> but also violated Article 9, the

renunciation of war article which embodies one of the three core principles of the existing constitution: namely, the sovereignty of the people, respect for fundamental human rights, and pacifism. More than 90% of Japanese scholars of constitutional law criticized Abe's interpretation as unconstitutional.<sup>9</sup> To challenge this highly questionable interpretation, the "Association for Article 96" was transformed into the "Association of Scholars Opposed to the Security-related Law", which was established in June 2015 and developed into a nation-wide movement, organizing symposia and seminars, and holding numerous gatherings with students and citizens.

The scholars' initiatives worked in harmony with those of associations of students such as "Students Emergency Action for Liberal Democracy" (SEALDs, which existed between May 2015 and August 2016) and with citizens' groups like the "Association of Mothers Opposed to the Security-related Law" (created in July 2015). These allied movements merged into one umbrella association, the "Civil Alliance for Peace and Constitutionalism" (Japanese title: *Anpō Hōsei no Haishi to Rikkenshugi no Kaifuku o Motomeru Shimin Rengō*, or *Shimin Rengō* for short) in December 2015. Their work encouraged the formation of a new coalition among the opposition parties, especially the Democratic Party and the Communist Party, under the banner of constitutionalism. As a result, in the 2016 Upper House election, the coalition of opposition parties won 11 out of 32 seats in single-seat constituencies, which marked major progress since the 2013 election, when they had won only 2 out of 31 seats.

The pro-constitutional coalition has been maintained with popular support from opponents of the Abe government. In October 2017 Prime Minister Abe announced a snap election and, immediately after this announcement, the Democratic Party split into

two factions over the issues of the Security Law and coalition arrangements. A new party, the Constitutional Democratic Party (CDP, *Rikken Minshutō*) was then formed by those former members of the Democracy Party who opposed Abe's Security Law and plans for constitutional revision and supported the maintenance of a coalition with other parties which took a similar stance. Even though it had entered the race belatedly with only 15 incumbent parliamentarians, the CDP won 55 seats and became the leading opposition party.

Despite the wide-ranging opposition to Abe's attack on the constitution, the government passed a string of new security-related laws with constitutional implications, including a Law on Collective Self-Defense in September 2015, and a Conspiracy Law in June 2017. Since the LDP steamrolled a bill on the Protection of Specially Designated Secrets through the Diet against fierce opposition in December 2013, the Abe administration has repeatedly disrespected the norms of Diet debate and ignored or defied strong opposition from public opinion.

Abe's contempt for the current constitution and his denial of constitutionalism only encouraged scholars' increasing involvement in the struggle surrounding the constitution, including engagement with the Association for Article 96 / Association of Scholars Opposed to the Security-related Laws. The rise of the association made ordinary citizens more aware of and interested in the very idea of constitutionalism. Meanwhile, an ambitious new bid by Abe to amend the current constitution was made public on May 3 2017, Constitution Day, when the largest newspaper, the *Yomiuri Shinbun*, reported that Abe had a timetable for a new Constitution, to be put into force in 2020.





**A wave of protest against Prime Minister Abe's call for constitutional revision.**

### *Constitutional Revision and Historical Revisionism*

I have been involved in these movements of scholars since the first symposium held by the Association for Article 96. As a scholar of feminist theory and western political philosophy, I have been engaged in this protest movement because it is deeply linked to my long-standing criticism of Abe's historical revisionism, especially on the issue of the "comfort women". It is clear that Abe's historical revisionism is closely related to his disdain for the current constitution. The current constitution was drafted by the allied administration – Supreme Command Allied Powers (SCAP) – during the occupation following Japan's defeat in World War II. Abe believes that the current constitution was imposed by SCAP, and that Article 9 fulfilled the American goal of ensuring that "Japan would never challenge the world order led by the US and Western Europe."<sup>10</sup> He contends that, under Article 9, Japan has been deprived of essential elements of its sovereignty. Resenting the fact that the preamble to the current constitution was (as he puts it) "a deed of apology [*wabi jōmon*]" to the victorious allies,<sup>11</sup> Abe argues that a passage in the preamble such as "we, the Japanese people,

desire peace for all time and are deeply conscious of the high ideals controlling human relationship, and we have determined to preserve our security and existence, trusting in the justice and faith of the peace-loving peoples of the world" is a "strangely humble and petty [*myō ni herikudatta, ijimashii*] sentence" appealing to the western powers.<sup>12</sup>

In his 2013 book, *Atarashii Kuni e* [*Towards a New Country*], Abe focuses exclusively on what the US did following WWII, while failing to reflect on any facts related to Japan's involvement in 20<sup>th</sup> century colonialism, invasions and war crimes in East Asian countries. The issue of the "comfort women" should (from this perspective) be put aside because it inevitably reminds Japanese that Japan was not only involved in World War II but has also engaged in many acts of aggression toward East Asian countries in modern times. But the renunciation of war involves something more than a national commitment not to go to war against "the allies", as constituted at that time: it is also a promise never to wage wars against East Asian countries, such as Korea and China. Thus, Article 9 is not only a result of Japanese defeat in WWII, but also the country's pledge to neighboring nations it once colonized or invaded.

Abe has long been prominent amongst Japanese historical revisionists, who regularly assert that colonialism, invasions of Asian countries, and the war crimes of the past should not be subjected to serious criticism, and that teaching about these topics in schools is a kind of "masochism" that undermines patriotism. According to Nakano Kōichi, a political scientist and critic of LDP policies and the Abe administration, 1997 was the year when historical revisionists began to wield a notable influence.<sup>13</sup> In that year, Abe established a group of "Young Parliamentarians for Thinking about the Future of Japan and History Textbooks" [*Nihon no Zento to Rekishi Kyōkashi o Kangaeru Wakate Giin no Kai*],

which he led. Since then, he has repeatedly intervened in educational issues in ways that bias media discourse on the issue of the “comfort women.” For example, in December 2000, Abe and the late LDP politician Nakagawa Shōichi pressured the Japanese national broadcaster NHK to revise its documentary program on the Women’s International War Crimes Tribunal, addressing the issue of the “comfort women.”<sup>14</sup>

Based on his revisionist stance, Abe has also focused on revising history education, where students might learn about the issue of the “comfort women” and other wartime violations of human rights. He and like-minded prominent figures exerted pressure to delete descriptions of the “comfort women” from junior high school history textbooks and to focus education on patriotism and “morality.”<sup>15</sup> Under the first Abe administration (2006-2007), for example, the government revised the Fundamental Law on Education to emphasize patriotism. Other crucial laws, including one for holding referenda – an essential part of the process for revising the constitution – were also passed under this administration. Ten years on, the effects of these changes are permeating every level of Japanese politics.

### *The Attack on Individualism: How Abe’s Plans Differ from Earlier Schemes to Amend the Constitution*

For Abe’s LDP, the current constitution is a symbol of the shameful history of occupation after the defeat in WWII: an occupation whose policies “unjustly suppressed our idea of nation and patriotism and excessively fragmented and weakened Japanese state power” through revision of the constitution and overhaul of the educational system.<sup>16</sup> This is why the LDP has striven so eagerly to revise the Constitution since its foundation in 1955. For example, under the Koizumi administration (2001-2006), the LDP proposed a draft outlining a number of

amendments identical to the key currently proposed changes.<sup>17</sup> Indeed, if you read the LDP’s mission statement, you can see that amending the constitution (especially Article 9) and revising the Fundamental Law on Education, are among the party’s founding principles.

However, as former Governor of Tokyo Masuzoe Yōichi has pointed out, earlier attempts to revise Article 9 – for example those drawn up by the Project Team for Amending the Constitution (2003-2004) under the Koizumi administration – tried to exclude many issues such as patriotism, family values, tradition etc. from their proposed amendments, lest they detract from their main goal. Masuzoe, as a leader of the Project Team under the Koizumi administration, severely criticized the 2012 draft of the LDP’s Amendment of the Constitution (hereafter, the 2012 draft) for its deviation from constitutionalism.<sup>18</sup>

As many scholars have pointed out, the 2012 draft rejects all three core principles of the current constitution: people’s sovereignty, human rights and the rejection of war (including denunciation of wars by the Japanese Imperial army). Reflecting historical revisionism, this completely revises the current preamble, which is based precisely on those principles. The newly proposed draft preamble reads:

Japan is a nation with a long history and unique culture, having the Emperor as the symbol of the unity of the people...

The Japanese people, defend our country and homeland with pride and strong spirit,... value harmony, and form a nation where families and the whole society assist one another [...]

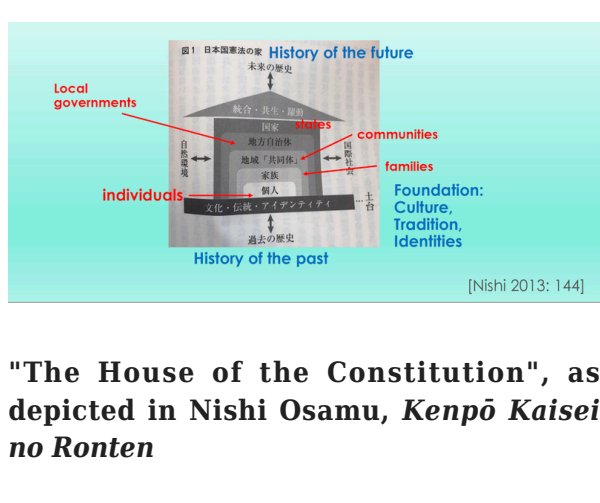
The Japanese people, in order to pass on our good traditions and our nation state to our descendants in perpetuity, hereby establish this Constitution.<sup>19</sup>

The 2012 draft thus emphasizes Japanese tradition as represented by the Emperor, the duty to defend the country, and family values. People's sovereignty is undermined by the fact that the Emperor is designated the head of the state in the preamble and in Article One. Respect for fundamental human rights is constrained by the demands of public order detailed in Articles 12 and 13, and importantly, Japanese citizens are no longer respected as "individuals" but only as "persons". Needless to say, the principle of renunciation of war in Article 9 is dismissed in favor of establishing a national defense army.

Higuchi Yōichi has criticized the 2012 draft as being worse than the "Five Articles of the Charter Oath" [*Gokajō no goseimon*], the foundational document of the Meiji regime, published in 1868. The LDP draft, he writes, is "not a return to the Meiji Constitution but rather like one of the proclamations of the Keian era (1648-1652) – the edicts imposed on Japanese peasants and others by the Tokugawa Shogunate]."<sup>20</sup> In a conversation with Higuchi, another scholar of constitutional law, Kobayashi Setsu recalls that he once tried to explain to members of the LDP that "the constitution does not exist to constrain the people, but should serve as the supreme law that limits the power of the state,"<sup>21</sup> and was taken aback at the politicians lack of understanding of this fundamental point. The 2012 draft is not simply a revision, but the destruction or total negation of principles of the current constitution. In fact, Abe firmly believes that the view of constitutionalism shared by most social science scholars was biased or old fashioned. During a debate in the Budget Committee of the House of Representatives on February 3, 2014, he condemned the idea that the constitution is intended to limit the power of the state in order to protect the fundamental rights of individuals, arguing that this "was an idea only relevant in the era of absolute monarchy."

Abe may have borrowed this interpretation from one of his key advisors, Nishi Osamu.<sup>22</sup> In his 2013 book on constitutional revision, Nishi asks, "what is the constitution? It is often defined as 'the supreme law which limits the power of the state' of Japan. [...] However this idea is as old-fashioned as the early constitutionalism of the 18<sup>th</sup> and 19<sup>th</sup> centuries, when people hoped for liberation from absolute monarchy." Nishi argues that the constitution in the twenty-first century should be a blueprint drawn up *by the nation itself as a collective subject*. Referring to Momochi Akira, another key Abe advisor, Nishi asserts that "the constitution is the fundamental legal text which forms the state as a national community sharing history, culture, and tradition."<sup>23</sup>

Nishi's view of the constitution is clearly set out in a diagram called "the House of the Constitution of Japan" [*Nihonkoku Kenpō no Ie*] which he himself designed. He likens this house to a repository which is inherited from the ancestors and therefore contains their history, tradition and culture. Individuals are residents in this house and are charged with passing it on to their descendants.<sup>24</sup> The image of "the House of the Constitution" can be described as a kind of prison, because in this imaginary nation, every individual, or (to reflect Nishi's concept more precisely) every "Japanese national" is supposed to be contained within the family, which in turn is contained within the state of Japan. Individuals have no independent direct connection to the world outside of the family nor to the world outside the state of Japan. This is also alarming because in Nishi's schema, both the history of the past and visions of the future can reach the individual only via the filter of the state of Japan.



As I mentioned earlier, the 2012 draft erases the term, “individual” from the core of the current constitution. Article 13 of the current constitution reads: “all of the people shall be respected *as individuals*. Their right to life, liberty, and the pursuit of happiness shall, to the extent that it does not interfere with the public welfare, be the supreme consideration in legislation and in other governmental affairs.” On the other hand, the 2012 draft respects the people not as “individuals” but as “persons” and restricts their fundamental rights in the name of “the public interest and public order.”

Both Higuchi and Kobayashi argue that the ostensibly slight change of terminology from “individuals” to “persons” is a serious threat to constitutionalism. According to Kobayashi, “the manic revisionists of the constitution [*kaiken mania*] always insist on rejecting ‘individual rights.’” These “manic revisionists” think that “solidarity within Japanese society has been lost because individualism was introduced into its constitution. We thus must expel individualism and rebuild the foundations of our society.”<sup>25</sup> Abe and the other ruling party members accuse individualism of destroying patriotism, communities, tradition, and family.<sup>26</sup> They claim, without evidence, that individualism is responsible for serious crimes such as parent and child killings.<sup>27</sup> For such revisionists, individualism translates into egocentrism, and the constitution should be the

mechanism by which individuals are contained and constrained within communities, such as families and “the state as a community with a common destiny [*unmei kyōdōtai*].”<sup>28</sup> Both Higuchi and Kobayashi, on the contrary, agree that the ideal of the “individual” is crucial, because individuals have their own intrinsic values, are expected to respect each other’s individuality while pursuing their own happiness, and should be liberated from the constraints of community as free human beings.<sup>29</sup>

### *Back to the Pre-War Era? Or into a New Regime?*

Higuchi and Kobayashi point out that by establishing a vision of “people” as inescapably embedded in communities, including the family, the revisionists abandon the notion of “individuals” who may exist free from community. This is a deep-rooted problem.<sup>30</sup> As Higuchi emphasizes, what is so alarming is that constitutionalism and its core value, the rights of the individual, are now threatened by the very legislators whose power should be constrained and controlled by the constitution. Is this an indication that we Japanese are now reverting to being a society deprived of a modern constitution?

To articulate the problem more clearly, I would like to refer to Canadian political philosopher Charles Taylor’s concept of “social imaginaries.”<sup>31</sup> According to Taylor, “social imaginaries” are common understandings shared by most people, who use this understanding in making sense of their own practices.<sup>32</sup> Ideas that begin as theories in the minds of a few intellectuals are disseminated and popularized as commonsense understandings of the world, and thus become so widely accepted by a society that its members have difficulty perceiving the world in any other way. Comparing Taylor’s concept of

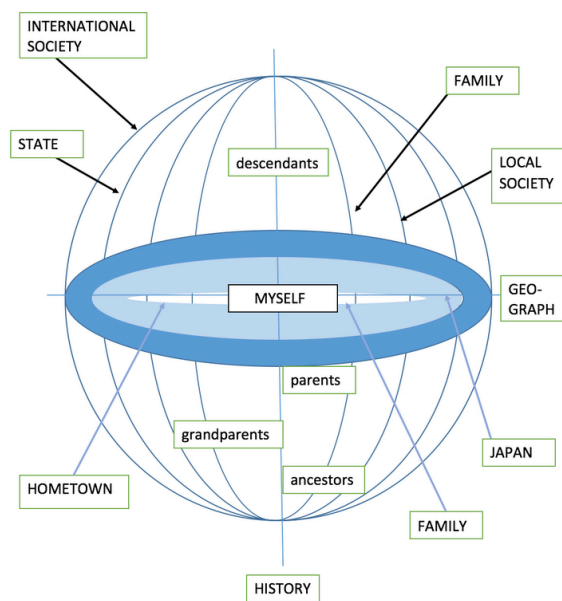


western social imaginaries based on the modern moral order with analyses of the formation of Japanese social imaginaries, we may obtain a clearer view of what Japanese people are experiencing and of where we are now. Taylor describes the modern moral order as follows:

The underlying idea of moral order stresses the rights and obligations we have as individuals in regard to each other, even prior to or outside of the political bond [...] Political authority itself is legitimate only because it was consented to by individuals (the original contract).<sup>33</sup>

Taylor's main point is that in this vision of society, in theory at least, individuals serve each other for mutual benefit and legitimate society precisely for the purpose of this shared benefit. The mutual service among individuals contributes to the needs of ordinary life, and does not aim "to secure for individuals the highest virtue... With Rousseau, for instance, freedom itself becomes the basis for a new definition of virtue, and an order of true mutual benefit becomes inseparable from one that secures the virtue of self-dependence".<sup>34</sup> In this imaginary, individuals exist prior to their society: individuals are an end in themselves and society is their instrument, not vice versa.

On the other hand, as we saw in Nishi's image of "the house of the Constitution of Japan," it is no exaggeration to say that many Japanese have "social imaginaries" different from the modern western one depicted by Taylor. Here is another figure of a social imaginary of the Japanese nation. This figure is part of the Ikushōsha publishing company's civics textbook used in junior high school social studies classes. Ikushōsha has published numerous books by Abe sympathizers, including Momochi Akira.



**Image of Japanese society, translated from Ikushōsha's *Shinpen Atarashii Minna no Kōmin*.**

This image too is completely fictitious and deeply alarming, especially for those who have ancestral roots outside Japan. In this diagram, no matter how far students trace back their ancestors, they can find no place for non-Japanese ancestry. A first glance at this picture suggests that "I" am the center of the world, but in fact, the nation state is; for the picture provides almost no space for students to imagine any international society *within* their own communities, because they themselves and their local communities are all portrayed as being contained within the territory of Japan. This makes it extremely difficult for students to envision heterogeneous histories of Japan. Where, for example, do the histories of Okinawa or Hokkaido belong in this homogenizing picture? (On this see, also the article by Uemura and Gayman in this special issue).

This text book also includes excerpts from an essay by novelist Sono Ayako, in which she

writes that “one can never become human or understand other countries unless one belongs thoroughly to one single state.”<sup>35</sup> My aim here is not so much to criticize the figure for its falsehood, as to highlight the power it has over many Japanese people’s own view of Japanese society. I am concerned that most Japanese might find nothing wrong with this figure. In this context, the open lectures and symposia on the Constitution recently organized by scholars become particularly significant as a means of fighting against such indoctrination within the Japanese education system.

When we look back historically at Japanese notions of “public” [公/ *ōyake*], tracing them back to the middle of the 8<sup>th</sup> century,<sup>36</sup> we find that “public” was a term applied to larger communities, while relatively smaller ones were treated as “private” [私/ *watashi*]. Mizoguchi Yūzō, a prominent scholar of history of Chinese thought, points out that ancient Japanese notions of “public” lack the implications embodied in the classical Chinese notion “public”, such as “fairness,” “equity,” “distribution” and *Tian* [天], that is, heaven, nature or cosmos.<sup>37</sup> In China the “public” could imply an order higher than the state. According to this understanding, when those in power became tyrants, the people could resort to the morality of *Tian*, thus becoming (in a sense) “public citizens of *Tian*”, while the tyrants became “private” from the viewpoint of *Tian*. Mizoguchi argues that, because Japan does not have such a notion of *Tian*,

amongst [the categories of] Imperial Court, government, state, people, and society, the state (as the largest territory) and the Emperor (as the highest status figure) occupy the greatest or the highest status as “public”(公) and these two [e.g. the state and the Emperor] are never recognized as “private” (私/ *shi*).<sup>38</sup>

Mizoguchi also points out an interesting feature of the notion of the “private” in Japan.

In contrast to the Chinese notion of the people becoming public citizens when they resist the government, Japanese people were seen as belonging to the private sphere, and private persons were seen as unrelated to public affairs. Such an idea was typical in the Edo era.

These social imaginaries not only constitute but also are constituted by social reality and political power. For twenty years since the start of the slide into revisionism, such social imaginaries have been revived and disseminated to legitimate the idea that the state is based on “tradition,” “culture,” and “history,” which are authorized and praised by the state powers, while individuals, family, and communities are constrained and contained by the state. According to the general understanding of the public and private in the theories that emerged through people’s struggles with state power in 17<sup>th</sup> and 18<sup>th</sup> century Western Europe, individuals who are liberated from communal attributions belong to the public sphere, as they also potentially do in the Chinese concept of “public”. On the contrary, the images of Japanese society created by Abe’s advisors such as Nishi Osamu blur the separation between the public and the private, and seek to conceal the key role of public sphere as a space where individuals can monitor, protest, and even fight state power. The constitutional revisionists criticize “individualism” for being too private and egocentric, yet at the same time they accuse people opposing government policies as not being properly “public” because they are too political. They consider the Japanese people as public only insofar as they are loyal to the government. In a word, they try to deprive Japanese citizens of the potentiality of the public sphere.

### Conclusion

As Higuchi’s critique highlights, the Abe administration’s proposed constitutional

revisions can be distinguished from earlier schemes. What Abe threatens to attack is constitutionalism itself; and in a sense, he has already managed to do this. His political endeavors can be traced back more than twenty years. To fulfill his ambition, Abe seeks to suppress voices opposing his government and to recreate a new nation of Japan, as in his book *Toward a New Country*. That is why he has persistently mobilized moral education and the family to suppress the ideal of individuals or individualism.

Japanese people have lived in a constitutional democracy for more than seventy years, and some are now standing up against the Abe government. In the process, these people become autonomous individuals who exercise their capacity of moral reasoning and create a public sphere. Abe and other revisionists cannot allow the formation of the kind of “public” created by these citizens, and thus condemn their approach either as being too private or as being too political, and as interfering with moral education and family.<sup>39</sup> Abe thus tries to create a new nation of Japan that is obedient to the government.

Having revised the Fundamental Law of Education and intervened in the textbook screening process [*kentei*] in his first administration, Abe now proposes a bill for “Family Education Support.” Betraying the word “support” in its title, the proposed bill actually imposes obligations on family members for supporting each other and idealizes only a particular form of family. If Abe remains in power throughout 2018, the bill is likely to be passed.

According to Taylor, the notion of “family” is the most effective implement for imposing a hierarchical order: “in a world of indigence and insecurity, of perpetually threatening death, the rules of family and community seemed the

only guarantee of survival”.<sup>40</sup> Although words such as “unity,” “harmony” or “connection”, which Abe emphasizes, appear merely to echo the criticism of individualism prevailing in the early Showa era, these words also function as a new tool to suppress people seeking to practice democratic life in the public sphere. We Japanese are now at a crossroads, facing a future where constitutional democracy may either be actualized or destroyed.

As I mentioned earlier, though, a newly created political party, the CDP, emerged out of people’s movements in the public sphere: movements which pose the question “what does democracy look like?” and try to find their own answer – “this is what democracy is” – under the banner of constitutionalism.<sup>41</sup> On the eve of the general election, October 22 2017, the CDP leader, Edano Yukio expressed his determination to “create a grassroots politics, which does not look down on people”. Both the decision to form a new party and the strategy for the election campaign arose from people’s movements and from popular demands for a policy to fight back against Abe’s assault on the constitution. Representative democracy has often been criticized because citizens appear to be free only in the moment when they elect members of parliament (as Rousseau famously noted). Some Japanese, however, have started to find a way to bridge a gap between representative democracy and their own democracy from below. The recent formation of the CDP is an example.

We now live in a democratic state with a constitution based on people’s sovereignty. We citizens of Japan will continue to resist the powers that attack individualism and constitutionalism, aided by our seventy-year experiences of constitutional democracy. To assure the survival of constitutional democracy, it will be crucial to create a new notion of the public sphere and of public spirit.

## SPECIAL ISSUE

### A New Constitution for Japan?

Edited by Tessa Morris-Suzuki and Takahashi Shinnosuke

Tessa Morris-Suzuki, [The Constitution, Human Rights and Pluralism in Japan: Alternative Visions of Constitutions Past and Future](#)

C. Douglas Lummis, [We, the Japanese People: Rethinking the Meaning of the Peace Constitution](#)

Noah McCormack, [Affirmative Action Policies Under the Postwar Japanese Constitution: On the Effects of the Dōwa Special Measures Policy](#)

Uemura Hideaki and Jeffry Gayman, [Rethinking Japan's Constitution from the Perspective of the Ainu and Ryūkyū Peoples](#)

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## Notes

<sup>1</sup> The term, “constitutional coup” is often used by constitutional scholars to emphasize that Abe’s attempt to amend the current constitution is not amendment but rather rejection of constitutionalism. For example, Ishikawa Kenji, a scholar of constitutional law, argued in an [interview with the Mainichi Shinbun](#) that “from a perspective of legal studies, it is a coup d’état.” [Accessed on 15<sup>th</sup> July, 2017].

<sup>2</sup> According to scholar of political theory Sugita Atsushi, the most significant achievement of the movement against security-related laws is that “a general understanding of constitutionalism has spread among ordinary citizens for the first time.” Sugita Atsushi, “Rikken Minshushugi o Torimodosu tame ni” [“To Take Back Constitutional Democracy”], *Sanka Sisutemu*, no. 104, 2016.

<sup>3</sup> See the [website by a scholar of constitutional law, Mizushima Asaho](#). Mizushima, a scholar of constitutional law was also a founding member of the Association for Article 96. [Accessed on 22<sup>th</sup> July, 2017] (emphasis added).

<sup>4</sup> I was one of the panelists at the symposium. For my speech, see [here](#) [Accessed on 22<sup>th</sup>



July, 2017]

<sup>5</sup> For example, the *Tokyo Shinbun* covered the press conference marking the inauguration of Association for Article 96 on its front page. [May 24<sup>th</sup>, 2013].

<sup>6</sup> See Toyoshita Narahiko, *Shūdanteki Jieiken to wa nani ka* [What is Collective Self-Defense?] Tokyo: Iwanami Shinsho, 2007, pp. 13-15. Those who support Abe's approach emphasize that collective self-defense is defined as an "inherent right" in Article 51 of Charter of the United Nations. However, Article 51 reads "[n]othing in the present Charter shall impair the inherent right of individual or collective self-defense [...] until the Security Council has taken measures." This means that each sovereign state is left to decide whether the right will be exercised or not. [Emphasis mine].

<sup>7</sup> Abe Shinzō, *Atarashii Kuni e---Utsukushii Kuni e* [Towards a New Country: Towards a Beautiful Country] Enlarged ver., Tokyo: Bunshun Shinsho, 2013, pp. 135-136.

<sup>8</sup> Under the Constitution, despite the fact that Article 9 prescribes the renunciation of war, and prohibits the possession of war potential and the right of belligerency by the state, since Japan is an independent nation, the Japanese government consistently takes the view that these provisions do not contradict Japan's inherent right of self-defense, and that "the Constitution allows Japan to possess the minimum level of armed force needed to exercise that right". (See also the article by Lummis in this issue). Previous governments took the view that any exercises of collective self-defense whose purpose is to defend other nations from attack should not be allowed under the Constitution, but this has now changed. See for example, Ministry of Defense "[Fundamental Concepts of National Defence](#)." [Accessed on 8th December, 2017].

<sup>9</sup> For example, the *Asahi Shinbun* sent out questionnaires to 209 scholars of constitutional law and got 122 answers in July 2015. Out of 122, there were only two scholars who did not respond that the exercise of collective self-defense was unconstitutional. See [here](#) [Accessed on 23<sup>rd</sup> July, 2017].

<sup>10</sup> Abe, *Atarashii Kuni e*, p. 125.

<sup>11</sup> Abe, *Atarashii Kuni e*, p. 126.

<sup>12</sup> Abe, *Atarashii Kuni e*, p. 127.

<sup>13</sup> Nakano Kōichi, *Ukeikasuru Nihon Seiji* [Japanese Politics Leans to the Right], Tokyo: Iwanami Shinsho, 2015, p. 107.

<sup>14</sup> See, for example, Norma Field, "[The Courts, Japan's 'Military Comfort Women', and the Conscience of Humanity: The Ruling in VAWW-net Japan v. NHK](#)," *The Asia-Pacific Journal: Japan Focus*, vol. 5, issue 2, February 2, 2007

<sup>15</sup> As I discuss below, "morality" [道德] in Japanese tends to be used to imply not a universal principle but rather the hierarchal rules of family and community, which are usually are handed down from the previous generations.

<sup>16</sup> See "[the LDP's mission](#)" [Accessed on 24th July, 2017].

<sup>17</sup> See for example, Zenkoku Kenpō Kenkyūkai, *Hōritsu Jihō Zōkan--- Kenpō Kaisei Mondai* [Legal Times, Expanded Edition: Problems of the Revision of the Constitution], Tokyo: Nihon Hyōron-sha, 2005.

<sup>18</sup> Masuzoe Yōichi, *Kenpō Kaisei no Omote to Ura* [The Visible and Concealed Faces of Constitutional Revision], Tokyo: Kōdansha Gendai Shinsho, 2014.

<sup>19</sup> Translation was based on Voices of Overseas Youth for Civic Engagement (VOYCE) but with

some words revised. See [here](#) [Accessed on 27th July, 2017].

<sup>20</sup> Higuchi Yōichi and Kobayashi Setsu, *Kenpō Kaisei no Shinjitsu* [The Truth about Constitutional Amendment], Tokyo: Shūeisha Shinsho, 2016, p. 51.

<sup>21</sup> Higuchi and Kobayashi, *Kenpō Kaisei no Shinjitsu*, pp. 21-22.

<sup>22</sup> Nishi Osamu, *Kenpō Kaisei no Ronten* [Controversies on Constitutional Amendment], Tokyo: Bunshun Shinsho, 2013, p. 134.

<sup>23</sup> Nishi, *Kenpō Kaisei no Ronten*.

<sup>24</sup> Nishi *Kenpō Kaisei no Ronten*, pp. 143-4.

<sup>25</sup> Higuchi and Kobayashi, *Kenpō Kaisei no Shinjitsu*, pp. 68-69.

<sup>26</sup> For example, Momochi asserts that “there can be no doubt that the Constitution of Japan lacks the idea of a state and that of a family. In a word, it is no exaggeration to say that it places absolute trust in individuals and ignores or makes light of the state and the family. That is why the state of Japan is confused and families are collapsing.” See [here](#) [Accessed on 25<sup>th</sup> July, 2017].

<sup>27</sup> Higuchi and Kobayashi, *Kenpō Kaisei no Shinjitsu*, pp. 69-70.

<sup>28</sup> See [Momochi’s argument](#). [Accessed on 25<sup>th</sup> July, 2017].

<sup>29</sup> See also Higuchi Yōichi, *Ichigo no Jiten: Jinken* [One-Word Dictionary: Human Rights, Tokyo: Sanseido, 1996, pp. 37-39.

<sup>30</sup> Higuchi and Kobayashi, *Kenpō Kaisei no Shinjitsu*, pp. 70 and 136.

<sup>31</sup> Charles Taylor, *Modern Social Imaginaries*, Durham and London: Duke University Press. 2004.

<sup>32</sup> Taylor, *Modern Social Imaginaries*, p. 23.

<sup>33</sup> Taylor, *Modern Social Imaginaries*, p. 4.

<sup>34</sup> Taylor, *Modern Social Imaginaries*, p. 20.

<sup>35</sup> Ikuhosha, *Shinpen Atarashii Minna no Kōmin* [New Civics for All, revised version], Tokyo: Ikuhosha, 2016, p. 13.

<sup>36</sup> Mizubayashi Akira, “Nihonteki “Kō-shi” Kannen no Genkei to Tenkai” [The Origin and Development of Japanese Idea of “the public-private], in Takeshi Sasaki and Kim Tae-Chang, *Kōkyō Tetsugaku 3: Nihon ni okeru Kō to Shi* [Public Philosophy III: The Public and the Private in Japan], Tokyo: Tokyo University Press, 2002, pp. 12-13.

<sup>37</sup> Mizoguchi Yūzō, “Chugoku Shisōshi ni okeru Kō to Shi” [“The Public and the Private in the History of Chinese Thought”] in Takeshi Sasaki and Kim Tae-Chang eds., *Kōkyō Tetsugaku 1: Kō to Shi no Shisōshi* [Public Philosophy I: The Public and the Private in Japan], Tokyo: Tokyo University Press, 2001, 36-42. In Japanese, although there is a term of *Tenka* [天下], it means a whole state.

<sup>38</sup> Mizoguchi, “Chugoku Shisōshi ni okeru Kō to Shi”.

<sup>39</sup> Abe, *Atarashii Kuni e*, chap.7. The title of chap.7 of *Toward a New Country* is “Reform of Education.” Abe emphasizes the importance of moral education and of teaching school students the idea that “the family is great”.

<sup>40</sup> Taylor, *Modern Social Imaginaries*, p. 17.

<sup>41</sup> The phrases, “what does democracy look like?” and “this is what democracy is,” were used during street demonstrations organized by SEALDs. Even after SEALDs was dissolved, people have continued to use these phrases during demonstrations.